

HOUSE BILL NO. 185

INTRODUCED BY HARRIS

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING RECLAMATION BOND PROVISIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT PERTAINING TO MINES ON FEDERAL LANDS; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ACCEPT BONDS PAYABLE TO THE STATE OF MONTANA AND A FEDERAL LAND MANAGEMENT AGENCY; AMENDING SECTIONS 82-4-338 AND 82-4-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department.

A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the

1 federal land management agency. The bond may provide that the federal land management agency may forfeit
2 the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable
3 to the department and may also be payable to the federal land management agency. If the bond is payable to
4 the department and the federal land management agency, the department, before accepting the bond, shall
5 enter into an agreement or memorandum of understanding with the federal land management agency providing
6 for administration of the bond funds in a manner that will allow the department to provide for compliance with
7 the requirements of this part, the rules adopted under this part, and the permit.

8 (III) THE DEPARTMENT MAY NOT ENTER INTO AN AGREEMENT OR MEMORANDUM OF UNDERSTANDING WITH A
9 FEDERAL LAND MANAGEMENT AGENCY THAT WOULD REQUIRE THE DEPARTMENT TO IMPOSE REQUIREMENTS ON AN
10 OPERATOR THAT ARE MORE STRINGENT THAN STATE LAW AND RULES.

11 (2) (a) The department may calculate one or more reclamation plan components within its jurisdiction
12 with the assistance of one or more third-party contractors selected jointly by the department and the applicant
13 and compensated by the applicant when, based on relevant past experience, the department determines that
14 additional expertise is necessary to calculate the bond amount for reclamation plan components. The
15 department may contract for assistance pursuant to this subsection in determining bond amounts for the initial
16 bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000
17 in contractor services provided under this subsection. The mine owner and the department are each responsible
18 for 50% of any amount over \$5,000.

19 (b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare
20 a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy
21 of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the
22 department's list. The department shall select its contractor from the list provided by the applicant.

23 (3) (a) The department shall conduct an overview of the amount of each bond annually and shall
24 conduct a comprehensive bond review at least every 5 years. The department may conduct additional
25 comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an
26 inspection of the permit area, the department determines that an increase of the bond level may be necessary.
27 The department shall consult with the licensee or permittee if a review indicates that the bond level should be
28 adjusted. When determined by the department that the set bonding level of a permit or license does not
29 represent the present costs of compliance with this part, the rules, and the permit, the department shall modify
30 the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate

1 the preliminary bond determination with the department, at the end of which time period the department shall
2 issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond
3 calculations that form the basis for the proposed bond determination and, for operating permits, publish notice
4 of the proposed bond determination in a newspaper of general circulation in the county in which the operation
5 is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee
6 requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the
7 amount represented by the final bond determination no later than 30 days after issuance of the final bond
8 determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the
9 licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day
10 extension of the deadline.

11 (b) The permittee or any person with an interest that may be adversely affected may obtain a contested
12 case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter
13 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final
14 bond determination, a written request for hearing stating the reason for the request. The request for hearing must
15 specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the
16 reasons that the licensee or permittee considers the department's final bond determination to be excessive. As
17 a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the
18 department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the
19 request for hearing or the amount that is one-half of the increase contained in the department's final bond
20 determination, whichever amount is greater. If the board determines that additional bond is necessary, the
21 licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the
22 board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence,
23 the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a
24 reasonable extension of the deadline.

25 (c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the
26 required amounts by the required deadlines, the license or permit is suspended by operation of law and the
27 licensee or permittee shall immediately cease mining and exploration operations until the required bond is
28 posted with and approved by the department.

29 (4) A bond filed in accordance with the provisions of this part may not be released by the department
30 until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(8) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (8) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (8)(a), the department may forfeit additional amounts under the procedure provided in subsection (8)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection and not used by the department to abate the imminent danger. The amount not returned to the surety

1 must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

2 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined
3 in subsection (8)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

4 (9) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled
5 or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond
6 for the entire amount of the terminated bond within 30 days following the notice of termination provided to the
7 department, then the license or permit must be immediately suspended without further action by the
8 department."

9
10 **Section 2.** Section 82-4-433, MCA, is amended to read:

11 **"82-4-433. Bond.** (1) A bond required to be filed under this part by the operator must be in a form that
12 the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance
13 with all requirements of this part, the rules of the board, and the permit. The bond must be signed by the
14 landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to
15 do business in the state of Montana, as surety. The bond must be in an amount not to exceed the costs of
16 restoration required by this part as determined by the department. The amount of the bond may not be less than
17 \$200 or more than \$1,000 an acre unless the department determines, in writing, that the cost of restoration of
18 the land exceeds \$1,000 an acre. Upon the cost determination, the bond amount must be set by the department
19 at the cost of restoring the land.

20 (2) (a) For opencut-mining operations on federal land within the state, the department may accept a
21 bond payable to the state of Montana and the federal agency administering the land. The bond must provide
22 at least the same amount of financial guarantee as required by this part.

23 (b) The bond must provide that the department may forfeit the bond without the concurrence of the
24 federal land management agency. The bond may provide that the federal land management agency may forfeit
25 the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable
26 to the department and may also be payable to the federal land management agency. If the bond is payable to
27 the department and the federal land management agency, the department, before accepting the bond, shall
28 enter into an agreement or memorandum of understanding with the federal land management agency providing
29 for administration of the bond funds in a manner that will allow the department to provide for compliance with
30 the requirements of this part, the rules adopted under this part, and the permit.

(2)(3) In lieu of the bond, the operator may deposit with the department cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs. The penalty of the bond or amount of cash and securities must be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the reclamation has been approved and the bond or security has been released by the department. The bond or security may cover only actual affected land and may be increased or reduced to cover only those acreages as remain unreclaimed.

~~(3)~~(4) If the license of a surety upon a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the department may suspend the permit of the operator to conduct operations upon the land described in the permit until the substitution has been made.

~~(4)~~(5) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

~~(5)~~(6) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements. If the board releases the operator from further obligation regarding any affected land, the penalty of the bond must be reduced proportionately."

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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